

From,

Principal Secretary
Department of Industrial Development
Govt. of Uttarakhand
Dehradun.

To,

Sh. Yogesh Pandey
Additional Chief Standing Counsel
for State of Uttarakhand
High Court of Uttarakhand
Nainital.

Industrial Development Section-1

Dehradun: Dated 10 January, 2018

Subject: Regarding Writ Petition No. 63 of 2018 (M/S) Rahul Pawar Vs. State of Uttarakhand through Principal Secretary Industrial Development & another.

Sir,

Please refer to your letter dated 08.01.2018 in aforementioned matter in this regard. I have been directed to say that the following instructions being given in this matter :-

Writ Petition No. 63/2018 namely Rahul Pawar vs. State of Uttarakhand through Principal Secretary Industrial Development. In the aforesaid matter prayers are made to issue Writ to declare the Rules 28 Ka(5), 28 Ka(10), 28 Ka(18) and 28 Ka(8) as ultravires and other corollary reliefs pertaining to the aforementioned Writ. The aforementioned provisions of Rules debar persons from applying for leases up to 5 Hectares and arrears between 5 Hectares to 50 Hectares on the basis that they are not a resident of District of Uttarakhand or the State of Uttarakhand.

2. The relevant Amended Rules were duly notified on 31-10 -2017 in the Gazette as Uttarakhand Minor Minerals(Concession) (Amendment) Rules issued under the powers derived from the section 15(1) of the MMDR Act 1957. Under the Scheme of the MMDR Act 1957, section 14 of the aforesaid Act specifically provides that the provisions of Sections 5 to 13 shall not apply for quarry, leases, mining leases or other mineral concessions in respect of minor minerals. Section 5 to 13 of the Act are provisions where the Union controls the regulation of mines and development of minerals. The aforesaid provisions prescribes the various restrictions and conditions for grant of mining leases etc and also prescribes the power of Central Government to make rules for certain category of minerals eg Atomic minerals. The Central legislation specifically delegated the power to State regarding the power to frame Rules qua the minor minerals by virtue of section 15 of the Act. State of Uttarakhand was formed as a new State by virtue of U.P. State reorganization Act 2000. The Uttarakhand State is having its own difficulties inter alia, being a Hilly State (almost 70% forest area), there are marginal farmers, unemployment and migration thereof due to such reasons. The State Government is following the Principle of Welfare State in its governance as enshrined in Article 21 of the constitution. In MMDR Act 1957, mandates to take care of the interest and benefit

of persons and areas affected by mining related operations for illustration, Section 9 B mandates that State Government shall by notification, establish a trust, as a non profit body to be called the District Mineral Foundation.

Thus keeping the Scheme of the MMDR Act and by virtue of following the Principle of Welfare State under Article 21 of the Constitution of India, the Government of Uttarakhand has amended the relevant Rules of 2001, by virtue of exclusive Powers granted to the State in the MMDR Act 1957 regarding the minor minerals and thereby addressing the benefit of marginal farmers, to create opportunity of employment in the affected areas and to check the problem of migration of the people belonging to the Uttarakhand State in general.

Thus there is a reasonable basis to make a Classification on the District basis and State basis and according a preferential treatment in the sense of giving certain concessions for applying for grant of lease etc. The grant of such concession to the residents of Districts and the State of Uttarakhand does not amounts to impermissible discrimination. There are relevant reasons to distinguish the residents of Uttarakhand and districts in particular and the relevant impugned Rules have nexus with the object sought to be achieved namely, to create opportunities for employment, to improve the financial conditions of marginal farmers having small area viz 5 Hectares of land and to check migration of people of Uttarakhand in general, thus cannot be said to be violative of Article 14 of the Constitution. There is a reasonable qualification and intelligible differentia and that intelligible differentia is having nexus with the object sought to be achieved.

3. The policy framed by the State of Uttarakhand is fully passed the Test Of Reasonable Classification. The classification may be made on different bases e.g. geographical or according to object or occupation or the like. As held by the Hon'ble Supreme Court in following judgements *Chiranjit Lal v. Union Of India*, AIR 1981 SC 41, *Abdul Rehman v. Pinto* AIR 1951, *Jagjit Singh v. State* AIR 1954, *R.K. Garg v. Union Of India* AIR 1981, *Monoponier Co. v. City Of Los Angeles*, *K. Thimmappa v. Chairman Central Board Of Director* AIR 1958, *Anwar Ali's case* AIR 1952 SC 75, *Ramkrishna Dalmia v Justice Tendolkar* AIR 1958, *Kedar Nath v State Of West Bengal* AIR 1953, *Kameshwar Singh v. F.N. Balsara* AIR 1954, *State Of Bombay v. F.N. Balsara* AIR 1951, *State Of West Bengal v. Anar Ali* AIR 1952, *Sagir Ahmed v. State* AIR 1954, AIR 1983 SC 130, AIR 1975 SC 1505, (2003) 10 SCC 78, AIR 1999 SC 1768.

In the matter of *M.P. Oil Extraction v. State of Madhya Pradesh*, AIR 1998 SC 145 Hon'ble Supreme Court held that Government decisions in matters of policy if prima facie based on plausible rationals, are generally upheld by the Courts. A certain element of discretion is thus allowed to be exercised by the executive.

In *Parenteral Drugs India Ltd. vs. State of Himachal Pradesh* AIR 2008 (NOCP) 380 HP Hon'ble High Court of Himachal Pradesh held that issuance of notification/circulars giving concessions to entrepreneurs for rapid industrialization cannot be said to be against provisions of law.

Therefore, as per the aforesaid settle legal position the challenged Rules based on plausible rationals the said Rules are not ultravires and would not violate Article 14 of the Constitution of India and the said writ petition is liable to be dismissed.

It is also requested to kindly apprise the Hon'ble Court Accordingly.

Yours sincerely

(Anand Bardhan)
Principal Secretary

No. 3060 /VII-I/2018-01Writ/2018, dated as above

Copy to: Chief Standing Counsel, Hon'ble High Court of Uttarakhand for kind information and necessary action.

By Order,

(Anand Bardhan)
Principal Secretary